



INTERIOR BOARD OF INDIAN APPEALS

Janice Freeman, et al., v. Pacific Regional Director, Bureau of Indian Affairs

38 IBIA 292 (01/29/2003)

Reconsideration denied:

39 IBIA 7



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
801 NORTH QUINCY STREET
SUITE 300
ARLINGTON, VA 22203

JANICE FREEMAN, et al.,	:	Order Affirming Decision
Appellants	:	
	:	
v.	:	
	:	Docket No. IBIA 01-51-A
PACIFIC REGIONAL DIRECTOR,	:	
BUREAU OF INDIAN AFFAIRS,	:	
Appellee	:	January 29, 2003

Appellants Janice Freeman; Ernesto Medel; Carlino Bettega; Eugene Ray; Fred Downey; Elizabeth Laiwa; David Frank, Jr.; Tony Duncan; Imogene Smith; Virgil Bettega; Chester Elliott, Jr.; and Evalina Mota seek review of a November 6, 2000, decision issued by the Pacific Regional Director, Bureau of Indian Affairs (Regional Director; BIA). The Regional Director affirmed a decision issued by the Superintendent, Central California Agency, BIA, continuing to recognize John Azbill and the Tribal Council that he headed as the official tribal government for the Round Valley Indian Tribes of the Round Valley Indian Reservation, 1/ declining to recognize the group headed by Appellants, and declining to recognize any change in the Tribe's constitution. For the reasons discussed below, the Board of Indian Appeals (Board) affirms that decision.

The Tribes are organized under the Indian Reorganization Act, 25 U.S.C. § 476 (IRA). In 1994, a Secretarial election was held for the purpose of voting on a proposed revision of the Tribes' then-existing constitution. The revised constitution was adopted by the voters on August 3, 1994, and was approved by the Acting Deputy Commissioner of Indian Affairs on September 14, 1994 (1994 constitution).

At a meeting held on February 10, 2000, Appellants (or some of them) and their supporters decided to form a new tribal government, apparently at least in part because of abuses they believed the RVIT had committed. The group elected an "interim tribal council" for their new government, which they called the Round Valley Nations (RVN). In a document dated

1/ For clarity, the Board uses the abbreviation "RVIT" for the BIA-recognized tribal government headed by Azbill and the term "Tribes" for the tribal membership.

February 16, 2000, and signed by 44 individuals, the RVN declared its independence from the RVIT. On February 24, 2000, the RVN notified BIA that it intended to hold an election on April 14-16, 2000, to adopt a new constitution and to replace the RVIT with a traditional form of government. The election was held as planned. On May 8, 2000, the RVN notified BIA that a new tribal constitution had been adopted and requested BIA cooperation in transferring tribal accounts, resources, and governmental responsibilities from the RVIT to the RVN. This request resulted in the Regional Director's issuance of the November 6, 2000, decision under review.

The Regional Director's decision states at page 2:

The Round Valley Indian Tribes adopted a Constitution on August 3, 1994, which was approved by the Deputy Commissioner of Indian Affairs on September 14, 1994. The existence of a written Constitution approved by the Secretary, or his representative, enables [BIA] to maintain a government-to-government relationship. The Round Valley Indian Tribes has pledged in its Constitution to follow certain internal governmental practices and the Federal Government has agreed to respect the Tribe's authority to operate its government in a manner set forth in the Tribal Constitution * * *.

It is our determination that the political faction known as the RVN and the action taken by this group was not accomplished in accordance with the tribal authorities, as defined in the Round Valley Indian Tribes' governing document. In addition, the "Declaration of Independence" is contrary to Section 16 of the [IRA], as amended [25 U.S.C. § 476], which states in part that "Any constitution or bylaws ratified and approved by the Secretary shall be revocable by an election open to the same voters and conducted in the same manner as provided for the adoption of a constitution or bylaws." Therefore, I am denying this appeal * * *.

Appellants sought review of this decision. Appellants, the RVIT, and the Regional Director have filed briefs in this appeal.

A tremendous amount of effort has been expended in this appeal on issues which are ultimately not relevant to review of the Regional Director's decision. The question for resolution in this appeal is actually quite straightforward: Were the Tribes' leadership and 1994 constitution validly changed as a result of Appellants' election?

The 1994 constitution includes provisions relating to tribal elections (Art. VIII), recall elections (Art. V, sec. 11), and removal of tribal council officials (Art. V, sec. 10). Appellants do not even contend that they followed the procedures in Article V, sections 10 or 11, to remove or recall the tribal officials who were in office before Appellants held their election.

Neither do Appellants contend that they were elected in accordance with Article VIII of the 1994 constitution. The Board therefore finds that the Tribes' leadership was not validly changed as a result of Appellants' election.

Article XV of the 1994 constitution sets forth procedures for amending the constitution. It provides:

Section 1. Requirements. This Constitution may be amended by a majority vote of the qualified voters of the Tribe voting at an election called for that purpose by the Secretary of the Interior, provided, that at least thirty percent (30%) of those entitled to vote shall vote in such election; but no amendment shall become effective until approved by the Secretary of the Interior or until deemed approved by the Secretary by operation of law. If the voters adopt the amendment(s), the Secretary of the Interior shall approve such amendment(s) within forty-five (45) days after the election unless the amendment(s) are contrary to applicable law; if the Secretary of the Interior takes no action within forty-five days, his approval shall be considered as given.

Section 2. Requests for a Secretarial Election. It shall be the duty of the Secretary of the Interior to call and hold an election on any proposed amendment at the request of the Tribal Council, or upon presentation of a petition signed by thirty percent (30%) of the qualified voters of the Tribe.

Regulations concerning Secretarial elections to amend, revoke, or adopt a tribal constitution are found in 25 C.F.R. Part 81. 25 C.F.R. § 81.5, Request to call election, provides in pertinent part:

(a) The Secretary shall authorize the calling of an election to adopt a constitution and bylaws or to revoke a constitution and bylaws, upon a request from the tribal government.

* * * * *

(d) The Secretary shall authorize the calling of an election on the adoption of amendments to a constitution and bylaws or a charter when requested pursuant to the amendment article of those documents. The election shall be conducted as prescribed in this part unless the amendment article of the constitution and bylaws or charter provides otherwise, in which case the provisions of those documents shall rule where applicable.

Appellants' overall intention is clear--they wish to replace the 1994 constitution with a new constitution providing for a traditional form of government. What is not clear is whether they intended to revoke the 1994 constitution and adopt a new constitution, or whether they intended to "amend" the 1994 constitution by completely replacing it.

Whatever Appellants' intention was, when they held their election, they were not the tribal government. Therefore, they were not authorized under the 1994 constitution or the regulations to request a Secretarial election to revoke the 1994 constitution or to adopt a new constitution. Under 25 C.F.R. § 81.5(a), only a tribal government can request such an election.

If Appellants had submitted a petition signed by 30 percent of the qualified voters, they would have had authority to request a Secretarial election to amend the 1994 constitution. Appellants did not, however, submit such a petition. On appeal, they contend that they "substantially" complied with the requirements for amending a constitution. They state that they were unable to comply completely with those requirements because BIA and/or the RVIT refused to provide them with information identifying qualified voters. They argue that, because of this failure, they were unable to determine how many signatures they needed to obtain in order to reach the requisite 30 percent of qualified voters. Appellants may also be arguing that, because they did not know who the qualified voters were, they may have obtained signatures from some individuals who were not qualified voters.

Appellants state that they requested information from BIA concerning qualified voters under the Freedom of Information Act, 5 U.S.C. § 552. Each tribal government, not BIA, is responsible for maintaining voter lists. The Regional Director contends that BIA responded to Appellants' request by providing them with the only information it had--a voter list from a recent election. In this appeal, Appellants state that they did not appeal this response because they believed that BIA had in fact provided them with the information it had. The fact that BIA did not have--and therefore could not provide to Appellants--the information Appellants requested, did not authorize Appellants to hold their own election in violation of the 1994 constitution and 25 C.F.R. Part 81 and does not make the Regional Director's decision incorrect.

Appellants state that they also requested information about qualified voters from the RVIT. The Board gives Appellants the benefit of every doubt on this issue and accepts their statement that their request was not granted. However, the RVIT's failure to provide Appellants with this information is not relevant to the question of whether Appellants' election effected a change in the Tribes' constitution. It is self-evident that a government in power will not be especially receptive to a grassroots movement to change the power structure. However, had Appellants obtained what they believed to be sufficient signatures on their petition, submitted that petition to BIA, and informed BIA that they were denied access to information identifying qualified voters, BIA would then have been responsible for obtaining information from the RVIT so that it could verify whether or not Appellants had obtained the

requisite number of signatures from qualified voters. If they had not obtained enough signatures, Appellants would have had the information they needed to try again.

Appellants admit that they did not do this. Rather than attempting to change the 1994 constitution through the established procedures, Appellants decided to circumvent those procedures. Appellants' election was not held in accordance with the constitutional and regulatory requirements for revoking, adopting, or amending a tribal constitution. Therefore, their election was invalid and did not result in the revocation or amendment of the 1994 constitution and did not result in the adoption of a new constitution.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Regional Director's November 6, 2000, decision is affirmed. 2/

//original signed
Kathryn A. Lynn
Chief Administrative Judge

//original signed
Anita Vogt
Administrative Judge

2/ Other arguments raised but not addressed were considered and found not relevant to a decision in this appeal.